IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Writ Petition No.345 of l995

Khandurao Narayan Ambore ..petitioner
vs
l) The State of Maharashtra
2) The Supdt. Regional Medical Hospital
3) The Dy Commissioner of Police Nagpada Zone II Mumbai ... respondents

Mr S.R. Mishra for petitioner
Ms Madhubala Kajale AGP for respondents

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 7.7.2005

(Per A.P.Shah J)

l. The facts of this case are extremely distressing and reveal the apathy on the part of the authorities as well as the members of the patient's family,which has resulted in the patient being detained in the mental asylum for nearly 8 years inspite of being cured and certified as being mentally fit by the Government Medical Board. The inaction on the part of the authorities has completely deprived him of his personal liberties constituting gross violation of his constitutionally guaranteed fundamental rights. The patient, Chandrakant Ambore, Chandrakant for short, was an employee of MSRTC. It appears that he was admitted in the mental hospital at Thane on

l9.l2.l994 pursuant to an order issued by the DCP, Zone II, Mumbai. He was diagnosed with a case of chronic psychosis. The present petitioner is the brother of Chandrakant .He filed this petition seeking a direction to the Thane Mental Hospital to continue to detain him in the hospital till he is completely cured and so certified by the Government Medical Board of J J Hospital, Mumbai. The petition was admitted and an interim direction was passed on l7.4.l995, restraining the hospital authorities from discharging Chandrakant till he is completely cured. As per the Court's direction, Chandrakant continued to be detained and treated.

2. In l997,the doctors of the hospital opined that Chandrakant was completely cured and was fit to be released from the hospital, Chandrakant was referred to J J Hospital for examination. The Special Psychiatry Board, J J Hospital issued a certificate dated 8.6.l997 stating that the patient was fit for discharge from the mental hospital and was advised to continue observation and treatment. It appears that after the said report of the Board, the medical officer at Thane Hospital addressed letters to the Registrar of this Court on 4.8.l997 and 20.8.l997 requesting to issue necessary

directions in respect of the patient who was fit for discharge. Unfortunately the then Registrar failed to take any action in response to these letters. It seems that some letters also followed subsequently, addressed in the name of Sub-Registrar of the High Court, Mumbai. It is not clear whether the letters were received by the Registry as there does not exist any post of "Sub-Registrar" in this Court. The letters, in our view, ought to have been addressed to the Prothonotary and Senior Master as the petition pertains to the Original Side. Be that as it may, the authorities should not have been contented with merely corresponding with the Registry but ought to have moved this Court for appropriate directions. As a result of this gross failure of the authorities, Chandrakant has been deprived of his freedom for nearly 8 years. It appears that Chandrakant’s family members were also aware that he had been cured but failed to take any action towards his discharge.

3. On 2l.4.2005, this matter some how came to be placed before this Court and it came to light that the interim order has been in force for almost l0 years. Consequently, notices were issued to the

respondents to produce records of his case before the Court. In furtherance to this notice, the respondents filed an affidavit disclosing that Chandrakant had been declared mentally fit in l997 itself and that he had continued to remain in the asylum only due to lack of directions from this Court. On 6.5.2005 Chandrakant was produced before the Court in Chamber. The petitioner and other members of his family as well as the concerned doctors were also present. The petitioner through his counsel assured the Court that Chandrakant would be taken back and would be looked after by the family. Accordingly, direction was issued to discharge Chandrakant from the mental hospital and provide him with medication for one month. It was further directed that Chandrakant would report back to the doctor in Thane Hospital, OPD after l month and the concerned doctor was directed to make a report to this Court.

4. When the above matter was again placed before this Court, it came to the Court’s notice that Chandrakant’s family had refused to accept him and he was forced to return to the hospital. This Court then tried to persuade Chandrakant’s family to take him back but they were reluctant to accept

him. The Court is conscious of the problems of such discharged patients in being rehabilitated in society. Many individuals, once discharged from asylums are virtually rendered homeless and become vulnerable to victimization. They find it difficult to re-adjust to living in the real world, especially when their own families fail to support their rehabilitation in the society. Unfortunately there are no community care programmes for such persons, at least none that we are aware of . Bearing in mind these difficulties, we discussed the issue of rehabilitation of Chandrakant with the doctors of Thane Medical Hospital as well as his family and after consulting Chandrakant, we are of the view that he can be placed in a suitable elders home and looked after by the staff there. Accordingly it has been decided to place Chandrakant in the elders home called Vanaprastha Niwas at Lonawala run by Desai Sahajeevan Trust. The concerned doctor of the Home has personally interviewed Chandrakant and has agreed to accommodate him in their elders home.

5. In our opinion the prolonged detention of Chandrakant in the mental asylum was wholly unjustified and illegal as a result of which a very

valuable right of his personal liberty remained illegally suspended during all these years. Power of the Court under Art 226 is not only injunctive in ambit, that is preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right of a citizen already committed. As observed by the Supreme Court in Rudul Shah vs State of Bihar (l983) 4 SCC l4l the only effective method open to the judiciary to prevent violation of that right and secure due compliance with the mandate of Art 2l, is to mulct its violators in the payment of monetary compensation. The right to compensation is thus some palliative for the unlawful acts of instrumentalities of the State. In view of the extremely disturbing facts of the case and considering the prolonged unlawful detention of Chandrakant in the mental hospital,we direct the State Government to pay to Chandrakant compensation of Rs.l (one) lac and also to waive the charges and expenses for his treatment during his detention in the mental hospital.

6. The learned counsel appearing for the petitioner, after taking instructions from the petitioner and his sister who are present in Court

agreed and undertook to deposit a lump sum amount of Rs.75,000 in this Court within 8 weeks from today and continue to deposit Rs.3000 per month towards maintenance and expenses of Chandrakant .

7. The MSRTC is directed to deposit the entire amount lying to the credit of their employee Chandrakant Narayan Ambore alongwith simple interest at the rate of 6% p.a. from the date on which the amount had become due till deposit in this Court within a period of 8 weeks. The Prothonotary and Senior Master is directed to forward copy of this order to the Chairman/Managing Director of MSRTC and also to the Standing Counsel of the MSRTC Shri G.S.Hegde.

8. The amounts deposited by the State Government , the petitioner as well as the amount received from MSRTC shall be forwarded to the Accounts Officer, High Court, Bombayhand to be invested in Fixed Deposit account in any nationalised bank in the name of Chandrakant Narayan Ambore. Chandrakant may withdraw the said amount or part thereof in case of difficulty with prior permission of the Court. The amount of monthly maintenance shall be deposited in a separate savings account in the name

of Chandrakant Narayan Ambore , out of which charges and expenses of elders home shall be paid every two months on receipt of bills from the elderly home.

9. The Desai Sahajeevan Trust which is running the elders home Vanaprashta Niwas shall ensure that Chandrakant is checked by the doctors at Thane Mental Hospital atleast once in three months.

. Petition stands disposed of accordingly.

. Liberty to apply in case of difficulty.